



# PRIVACY, RECORDING DEVICES AND SECURITY



C.A.R.  
LEGAL  
TOOLS

# CALIFORNIA'S EAVESDROPPING STATUTE

**California Penal Code, Section 632,  
(the “eavesdropping statute”) prohibits:**

- Use of a recording device to eavesdrop upon or record a confidential communication
- Without the consent of all parties to that communication

# WHEN IS A COMMUNICATION CONFIDENTIAL?

Any communication in circumstances that **reasonably** indicate it is confidential.

Fact based interpretation:

Likely reasonably confidential:




Private homes ○ Private cars ○ Conference rooms

**NOT** likely reasonably confidential:

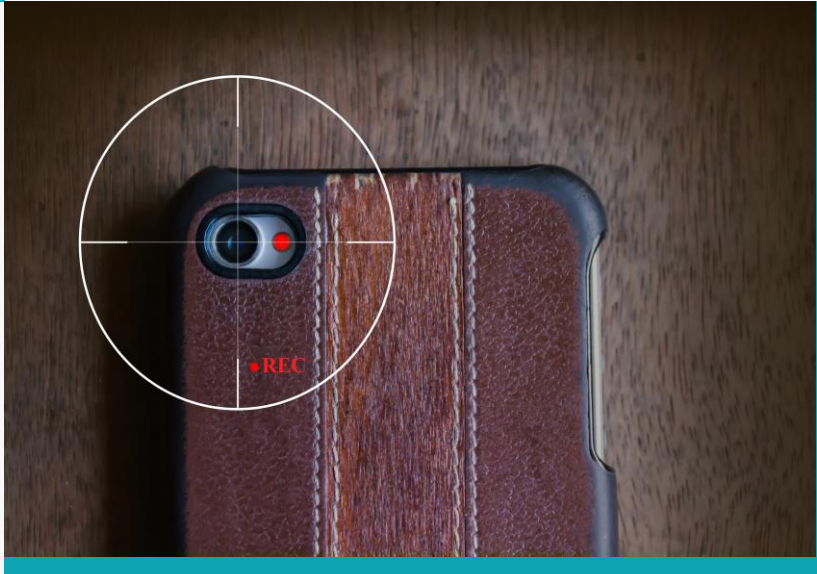
Public spaces like parks ○ Talking around the water cooler at the office



## WHAT OTHER LAWS APPLY?

-  Article I, Section 1 of the California Constitution provides that all people have inalienable rights, including pursuing and obtaining privacy.
-  Not every act which impacts privacy results in a violation of the California Constitution – it must constitute an egregious breach of social norms.
-  While privacy rights are high in one's own home, the law is not necessarily applied the same when in someone else's home.

# PENALTIES FOR ILLEGAL RECORDING



- A **fine** of up to \$2,500 per violation
- **Imprisonment** for up to one year
- Possibly both a fine and imprisonment

# EXCEPTIONS TO THE EAVESDROPPING STATUTE






No violation if it is **known by all parties** to the confidential communication that the communication is being overheard or recorded.

# REASONABLE EXPECTATIONS IN SELLER'S HOME

- Facts and circumstances provide the answer
- Consider devices like Amazon Echo and Google Home that record continuously
- When in doubt, **disclose** possible recording
- Don't be the test case for what is "reasonable"



## ADVICE TO SELLERS

-  A prudent seller will make the disclosure to avoid claims of unlawfully invading private or confidential communications.
-  Disclosing the existence of surveillance equipment makes it very difficult for such persons to make a claim that there is a reasonable expectation of privacy or they were unknowingly recorded.
-  C.A.R.'s Residential Listing Agreement, Form RLA, makes this recommendation in paragraph 10.



# WHAT SHOULD THE NOTICE SAY?

There is no precise language that creates a “safe harbor”

These examples would likely be sufficient:

## Notice

This property is being monitored by surveillance equipment.



Smile, and please talk clearly; you are being recorded.



Welcome to my home.  
Recording equipment on the premises.



## Where Should Notices be Posted?

- On or near the front door or other entrance to the property
- Placement should be in a location that is likely to be seen
- Consider door may be left open during an open house so multiple signs may be prudent



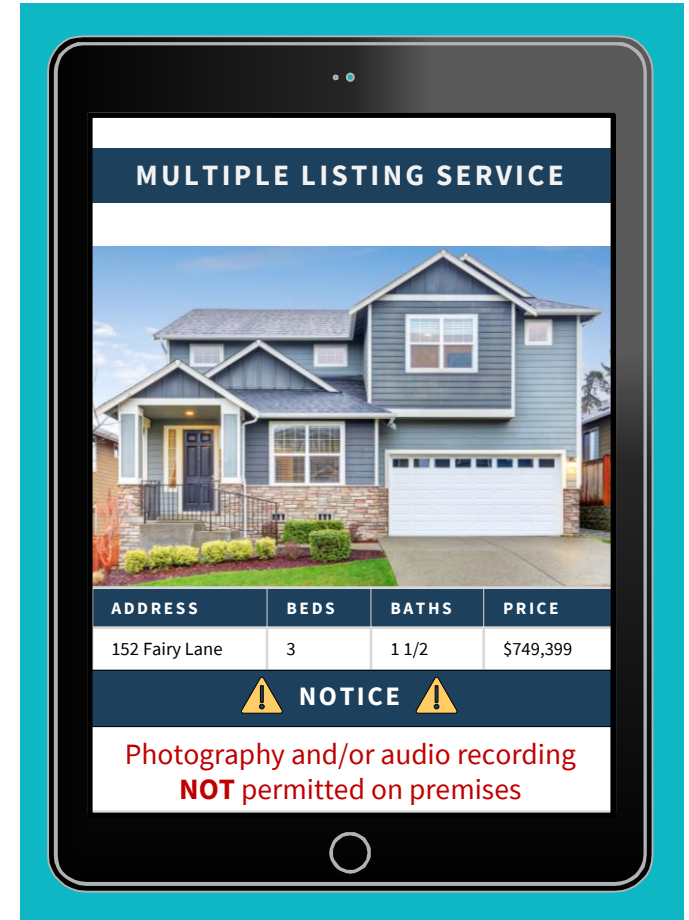
# Keep Client Communications Private

Whether or not a notice has been posted on the listed property, it is always a good idea to have private conversations outside the presence or property of the listing agent or seller



# PREVENTING RECORDINGS

- Sellers may request that photos or videos not be taken
- Sellers may even ask you to put such notices in the MLS
- Policing may prove difficult or impossible
- Smart phones and other small devices with cameras are difficult to detect so managing Seller expectations is important



## Protecting Seller's Valuables

- Sellers should be advised to move or safeguard valuables as early as possible and always before marketing begins
- Sellers should be advised to consult their insurance company to determine what is required or suggested to assure that coverage will be available in the event of a loss.



# Additional Resources



## **Video for Sellers**

Safety and Privacy Considerations for Buyers and Sellers



## **Quick Guide**

Privacy, Recording Devices and Security, Part 1



## **Quick Guide**

Privacy, Recording Devices and Security, Part 2